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ARBITRATION, CLOSED

U.S. District Court
District of New Jersey [LIVE] (Trenton)
CIVIL DOCKET FOR CASE #: 3:07-cv-01712-GEB-JJH
Internal Use Only

1

NOVELLA et al v. FERGUSON et al
Assigned to: Chief Judge Garrett E. Brown, Jr.
Referred to: Magistrate Judge John J. Hughes
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 04/12/2007
Date Terminated: 05/25/2007
Jury Demand: Plaintiff
Nature of Suit: 350 Motor Vehicle
Jurisdiction: Diversity

Plaintiff

ROSE ANN NOVELLA

represented by **JEAN E. DONOGHUE-SIMON**
1433 HOOPER AVENUE
SUITE 212
TOMS RIVER, NJ 08754-4919
(732) 286-6900
Email: jedslaw@aol.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

ROSARIO NOVELLO
her husband

represented by **JEAN E. DONOGHUE-SIMON**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

CARL FERGUSON

represented by **JOHN LEE MCDERMOTT, JR.**
MC DERMOTT & MC GEE
75 MAIN STREET
P.O. BOX 192
MILLBURN, NJ 07041
(973) 467-8080
Email:
jmcdermott@mcdermottandmcgee.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

ROSE FERGUSON

represented by **JOHN LEE MCDERMOTT, JR.**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**JOHN DOE 1-5***(fictitious names)***Defendant****ABC CORPORATIONS 1-5***(fictitious names), jointly, severally, and
in the alternative*

Date Filed	#	Docket Text
04/12/2007	1	COMPLAINT against ABC CORPORATIONS 1-5, CARL FERGUSON, ROSE FERGUSON, JOHN DOE 1-5 (Filing fee \$ 350 receipt number 356818.) jury demand, filed by ROSE ANN NOVELLA, ROSARIO NOVELLO. (Attachments: # 1 Civil Cover Sheet)(ce3) (Entered: 04/12/2007)
04/12/2007		ATTENTION COUNSEL - As of May 1, 2006, Civil initial pleadings such as complaints and notices of removal must be filed electronically. Payment of the filing fee is made via the internet (pay.gov). Visit our website at www.njd.uscourts.gov for additional information. In the future, to expedite the processing of the initial pleadings, counsel is requested to file complaints and notices of removal electronically. (ce3) (Entered: 04/12/2007)
04/12/2007	2	Summons Issued as to ABC CORPORATIONS 1-5, CARL FERGUSON, ROSE FERGUSON, JOHN DOE 1-5. Mailed to Counsel (Days Due - 20). (ce3) (Entered: 04/12/2007)
04/12/2007		CASE REFERRED to Arbitration. (ce3) (Entered: 04/12/2007)
05/07/2007	3	MOTION to Change Venue by CARL FERGUSON, ROSE FERGUSON. (MCDERMOTT, JOHN) (Entered: 05/07/2007)
05/08/2007		Setting Deadlines as to 3 DEFICIENT MOTION to Change Venue. [NO BRIEF] Motion set for 6/4/2007 10:00 AM in Trenton - Courtroom 4E before Chief Judge Garrett E. Brown, Jr. (PLEASE NOTE THAT PURSUANT TO FED. R. CIV. P. 78 AND LOCAL RULE 7.1(B)(4), NO ORAL ARGUMENT WILL BE HELD IN THIS MATTER AND PARTIES SHOULD NOT APPEAR UNLESS SPECIFICALLY DIRECTED TO DO SO BY THE COURT.) (ij,) (Entered: 05/08/2007)
05/10/2007		(Court only) Motions No Longer Referred: 3 MOTION to Change Venue (dg,) (Entered: 05/10/2007)
05/15/2007	4	BRIEF in Support re 3 MOTION to Change Venue filed by CARL FERGUSON, ROSE FERGUSON. (MCDERMOTT, JOHN) (Entered: 05/15/2007)
05/25/2007	5	ORDER granting 3 Motion to Change Venue and transferring case to Southern District of New York Signed by Judge Garrett E. Brown, Jr. on

		5/24/2007. (ss,) (Entered: 05/29/2007)
05/25/2007	●	***Civil Case Terminated. (ss,) (Entered: 05/29/2007)

RECEIVED

LAW OFFICE OF JEAN DONOGHUE-SIMON
1433 HOOPER AVENUE, SUITE 212
P.O. BOX 4919
TOMS RIVER, NJ 08754-4919
732-286-6900

APR 12 2007

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

Attorneys for Plaintiffs, Rose Ann Novella and Rosario Novella

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband, <p style="text-align: right;">Plaintiffs,</p>	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
<p>v.</p>	<p style="text-align: right;">Civil Action 07-1712 (GFB)</p>
CARL FERGUSON and ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative, <p style="text-align: right;">Defendants.</p>	<p style="text-align: center;">COMPLAINT, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL</p>

Plaintiffs, Rose Ann Novella and Rosario Novella, residing at 224 Lantern Place in the Borough of Tuckerton, County of Ocean, and State of New Jersey, by way of Complaint against defendants, say:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. 1332.
2. Venue is proper in this District since there is diversity of all parties.

FIRST COUNT

1. On or about April 15, 2005, plaintiff, Rose Ann Novella, was the owner and operator of a motor vehicle, which was exiting the Newburgh Mall traveling in a southeasterly direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.

2. At the time and place aforesaid, defendant, Carl Ferguson, was the operator of a motor vehicle owned by Rose Ferguson, which was traveling in a southerly

direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.

3. At the time and place aforesaid, defendant, Rose Ferguson, owned, operated, maintained, and/or repaired the motor vehicle related to any allegations made in this Complaint.

4. At the time and place aforesaid, defendants Carl Ferguson and Rose Ferguson resided at 10 Estate Boulevard in the City of Newburgh, County of Orange, State of New York.

5. At the time and place aforesaid, defendants, John Doe 1-5 (fictitious names), were unknown persons or entities who owned, operated, maintained, and/or repaired motor vehicles related to any allegations made in this Complaint.

6. At the time and place aforesaid, defendants, ABC Corporation 1-5 (fictitious names), who owned, operated, maintained and/or repaired motor vehicles related to any allegations made in this Complaint.

7. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), owed plaintiff a duty to operate, maintain, and/or repair the motor vehicle in a reasonably prudent and safe manner so as not to cause harm to the plaintiff.

8. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), breached said duty and so negligently and carelessly operated, maintained and/or repaired their motor vehicle so as to cause the motor vehicle being operated by the defendant aforesaid to strike plaintiff, Rose Ann Novella.

9. As a direct and proximate result of the aforesaid carelessness, and negligence of defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly and/or severally, and in the alternative, plaintiff was caused to suffer severe, multiple and permanent bodily injuries, has suffered and continues to suffer great pain and anguish, has incurred and will continue to incur expenses for medical care and treatment, has been and will continue to be unable to engage in his usual duties and activities, and as otherwise sustained damages.

WHEREFORE, plaintiff, Rose Ann Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

SECOND COUNT

1. Plaintiff, Rosario Novella, repeats and realleges the allegations of the First Count of the Complaint as though set forth more fully herein at length.

2. Plaintiff, Rosario Novella, is the husband of plaintiff, Rose Ann Novella.

3. As the result of the injuries suffered by his wife as aforesaid, plaintiff, Rosario Novella, was deprived of the services, society and consortium of his wife from the time of the accident until the present, and will in the future continue to suffer said loss of services, society and consortium.

WHEREFORE, plaintiff, Rosario Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

JURY DEMAND

PLEASE TAKE NOTICE that the plaintiffs demand a trial by jury as to all issues.

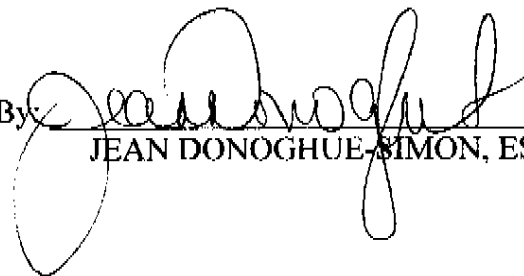
DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby designate Jean Donoghue-Simon, Esquire as trial counsel on the within cause pursuant to the R. 4:24-4

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

Pursuant to R. 4:5-1, the matter in controversy is not the subject of any other action pending in any Court or in any pending arbitration proceeding, nor is any arbitration proceeding contemplated. Plaintiffs are not aware of any other parties, which should be joined in this action.

LAW OFFICE OF JEAN DONOGHUE-SIMON
Attorneys for Plaintiffs

By 
JEAN DONOGHUE-SIMON, ESQ.

DATED: April 10, 2007

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DEFENDANTS

(b) County of Residence of First Listed Plaintiff Ocean
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Orange
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number) (732) 286-6900
Jean Donoghue-Simon
1433 Hooper Ave, Suite 212, Toms River, NJ 08754

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input checked="" type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. 1332
Brief description of cause: motor vehicle accident

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ 500,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 4/10/07

SIGNATURE OF ATTORNEY OF RECORD

Jean Donoghue-Simon, Esq.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

SUMMONS

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Civil Action

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband, Plaintiffs, v. CARL FERGUSON and ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative, Defendants.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Civil Action No: 07-cv-1712 (GEB) Civil Action COMPLAINT, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL
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To the above named defendants

You are hereby summoned and required to serve upon Jean Donoghue-Simon, Esq, Plaintiff's attorney, whose address is: 1433 Hooper Ave, Suite 212, Toms River, N.J., an Answer to the Complaint, which is hereby served upon you, within 20 days after the service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

WILLIAM T. WALSH, CLERK

Clerk of the Court

Dated: 4-12-07

Charmaine D. Ellington,
Deputy Clerk

MC DERMOTT & MC GEE, LLP

75 Main Street, Suite 305

P.O. Box 192

Millburn, NJ 07041

973-467-8080

Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA,
her husband,

-vs-

Defendants,

CARL FERGUSON, ROSE FERGUSON,
JOHN DOE 1-5 (fictitious names),
ABC CORPORATION 1-5
(fictitious names), jointly, severally and
in the alternative

**NOTICE OF MOTION FOR AN ORDER TO
CHANGE VENUE, PURSUANT TO
*Civ.R. 12(b)(3)***

TO: LAW OFFICE OF JEAN DONOGUE-SIMON
Attorneys for Plaintiffs
1433 Hopper Avenue, Suite 212
P.O. Box 4919
Toms River, NJ 08754-4919

COUNSEL:

PLEASE TAKE NOTICE that the undersigned, counsel for defendants, Carl Ferguson and Rose Ferguson, shall apply before the Honorable Garrett E. Brown, at the United States District Court, District

of New Jersey, at the Clarkson S. Fisher Building & U.S. Courthouse, 402 East State Street, Trenton, New Jersey, on a date certain to be set down by this Court, seeking an Order changing the venue of the within litigation from the District of New Jersey to the Southern District of New York, pursuant to *Civ. R. 12(b)(3)*.

Counsel will rely upon the annexed Certification of Counsel in support hereto.

TAKE FURTHER NOTICE that a proposed form of Order is annexed hereto.

MC DERMOTT & MC GEE

By


John L. McDermott, Jr. (2779)

Dated: May 7, 2007

MC DERMOTT & MC GEE, LLP

75 Main Street, Suite 305

P.O. Box 192

Millburn, NJ 07041

973-467-8080

Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA,
her husband,

-vs-

Defendants,

CARL FERGUSON, ROSE FERGUSON,
JOHN DOE 1-5 (fictitious names),
ABC CORPORATION 1-5
(fictitious names), jointly, severally and
in the alternative

CERTIFICATION OF COUNSEL

JOHN L. McDERMOTT, JR. being of full age, hereby certifies as follows:

1. I am an Attorney-At-Law of the State of New Jersey and am a member of the firm of McDermott and McGee, LLP.
2. We have been retained to represent Carl Ferguson and Rose Ferguson in connection with the above-entitled litigation.
3. This law suit arises out of a motor vehicle accident which occurred on April 15, 2005 on Route 300 at the intersection with the entrance/exit to the Newburgh Mall in Newburgh, New York.

(See copy of police report annexed hereto as Exhibit "A".)

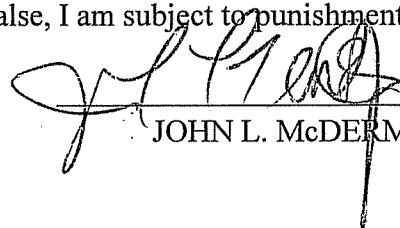
4. Plaintiffs Rose Ann Novella and Rosario Novella have filed suit in the United States District Court for the District of New Jersey citing, as the basis for their suit, diversity of citizenship and amount in controversy in excess of sum or value of \$75,000.00, pursuant to 28 U.S.C. 1332. Plaintiffs also allege that the venue is proper in the District of New Jersey as there is diversity of all parties. (See copy of plaintiffs' Complaint annexed hereto as Exhibit "B".)

5. The venue in this matter is improper. Defendants, Carl Ferguson and Rose Ferguson, the only defendants, are both residents of Newburgh, New York. The incident, which gives rise to this litigation, occurred in Newburgh, New York. Therefore, pursuant to 28 U.S.C. §1391(a), this matter should be venued in the United States District for the Southern District of New York.

6. 28 U.S.C. §1391(a) states "(a) civil action wherein jurisdiction is founded only on diversity of citizenship may, except as other-wise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim, occurred . . . , or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought." Here, the suit is based upon diversity of citizenship. Both defendants reside in Newburgh, New York which is situated within the Southern District of New York. The accident giving rise to this litigation occurred in Newburgh, New York which is situated in the Southern District of New York. Therefore, pursuant to *Civ. R. 12(b)(3)*, venue in this matter should be changed to the Southern District of New York.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: May 7, 2007



JOHN L. McDERMOTT, JR.(2779)

Exhibit “A”

Page 1 of 3 Pages

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (3/04)

Local Codes
SJS# 1021838
BP2F39000025

☐ AMENDED REPORT

Accident Date Month 4 Day 15 Year 2005		Day of Week Friday	Military Time 10:33	No. of Vehicles 3	No. Injured 1	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photo <input type="checkbox"/>																																																																	
Vehicle 1 - Driver License ID Number 601902981		State of Lic. NY		Vehicle 2 - Driver License ID Number N6851 6717759402		State of Lic. NJ																																																																				
Driver Name - exactly as printed on license FERGUSON, CARL		Apt. No.		Driver Name - exactly as printed on license ROSEANN, NOVELLA P		Apt. No.																																																																				
Address (include Number and Street) 10 ESTATE BLVD		City or Town NEWBURGH		Address (include Number and Street) 224 LANTERN PLACE		City or Town TUCKERTON																																																																				
State NY Zip Code 12550		State NJ Zip Code 08087																																																																								
Date of Birth Month 2 Day 25 Year 1967 Sex M		No. of Occupants 01 Public Property Damaged <input type="checkbox"/>		Date of Birth Month 9 Day 7 Year 1940 Sex F		No. of Occupants 01 Public Property Damaged <input type="checkbox"/>																																																																				
Name - exactly as printed on registration FERGUSON, ROSE		Sex F Date of Birth Month 9 Day 7 Year 1940		Name - exactly as printed on registration ROSEANN, NOVELLA P		Sex F Date of Birth Month 9 Day 7 Year 1940																																																																				
Address (include Number and Street) 10 ESTATE BLVD		Apt. No.		Address (include Number and Street) 224 LANTERN PLACE		Apt. No.																																																																				
City or Town NEWBURGH		State NY Zip Code 12550		City or Town TUCKERTON		State NJ Zip Code 08087																																																																				
Plate Number E356VU		State of Reg. NY Vehicle Year & Make 1998 PLYM		Plate Number RNE71K		State of Reg. NJ Vehicle Year & Make 2004 HOND																																																																				
Vehicle Year & Make 1998 PLYM		Vehicle Type SOBN		Vehicle Year & Make 2004 HOND		Vehicle Type SUBN																																																																				
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Violation Section(s) 4011A 12.11D1		Violation Section(s)																																																																								
Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.		Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.		Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.																																																																						
Box 1 - Point of Impact Box 2 - Most Damage		Box 1 - Point of Impact Box 2 - Most Damage		Diagram showing vehicle positions and movement arrows.																																																																						
Enter up to three more damage codes 4 4 3		Enter up to three more damage codes 1 2 14		ACCIDENT DIAGRAM																																																																						
Vehicle Dr. QUALITY TON Towed To: QUALITY TON		Vehicle Dr. AER Towed To: AER		See the last page for the accident diagram.																																																																						
VEHICLE DAMAGE CODING: 1-4 SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER		VEHICLE DAMAGE CODING: 1-4 SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER		Cost of repairs to any one vehicle will be more than \$1000. <input checked="" type="checkbox"/> Unknown/Unable to determine <input type="checkbox"/> Yes <input type="checkbox"/> No																																																																						
Reference Marker 3 0 0		Coordinates (if available) Latitude/Northing: 577620 Longitude/Easting: 4596845		Place Where Accident Occurred: County ORANGE <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of NEWBURGH																																																																						
8 1 0 2				Road on which accident occurred: ST-300 (Route Number or Street Name)																																																																						
1 0 7 5				at 1) intersecting street NEWBURGH MALL ENTRANCE (Route Number or Street Name) or 2) _____ <input type="checkbox"/> N <input type="checkbox"/> S of _____ <input type="checkbox"/> E <input type="checkbox"/> W (Intersecting Street Name or Street Name)																																																																						
Accident Description/Officer's notes: PATROLLED TO MAIN ENTRANCE OF NEWBURGH MALL ON RT 300 AT LIGHT. DRIVER OF V-1 WAS HEADING SOUTHBOUND ON RT 300 APPROACHING THE INTERSECTION OF RT300 AND NEWBURGH MALL EXIT/ ENTRANCE. DRIVER OF V-1 FAILED TO NOTICE RED LIGHT IN FRONT OF HIM AS THE TRAFFIC CONTROL DEVICE FOR HIS LANE. V-1 DROVE THROUGH RED LIGHT STRIKING V-2 IN THE LEFT FRONT QUARTER PANEL. V-1 THEN CONTINUED ON STRIKING V-3 HEAD ON. OPERATOR AND REGISTERED OWNER INSURANCE INFORMATION FOR OUT OF STATE PLATES RNE71K, INS. CODE 419 POLICY # 257M415156.																																																																										
<table border="1"> <thead> <tr> <th>#</th> <th>9</th> <th>10</th> <th>11</th> <th>12</th> <th>13</th> <th>14</th> <th>15</th> <th>16</th> <th>17 BY</th> <th>TO 18</th> <th>Names of all involved</th> <th>Date of Death Only</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>1</td> <td>4</td> <td>1</td> <td>38</td> <td>M</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>FERGUSON, CARL</td> <td></td> </tr> <tr> <td>2</td> <td>1</td> <td>A</td> <td>1</td> <td>64</td> <td>F</td> <td>04</td> <td>12</td> <td>6</td> <td>9993</td> <td>3506</td> <td>ROSEANN, NOVELLA P</td> <td></td> </tr> <tr> <td>3</td> <td>1</td> <td>4</td> <td>1</td> <td>41</td> <td>F</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>DENMAN, SUMETTA</td> <td></td> </tr> <tr> <td>3</td> <td>5</td> <td>5</td> <td>1</td> <td>2</td> <td>F</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>-</td> <td>DENMAN, CATTLIN</td> <td></td> </tr> </tbody> </table>										#	9	10	11	12	13	14	15	16	17 BY	TO 18	Names of all involved	Date of Death Only	1	1	4	1	38	M	-	-	-	-	-	FERGUSON, CARL		2	1	A	1	64	F	04	12	6	9993	3506	ROSEANN, NOVELLA P		3	1	4	1	41	F	-	-	-	-	-	DENMAN, SUMETTA		3	5	5	1	2	F	-	-	-	-	-	DENMAN, CATTLIN	
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3	5	5	1	2	F	-	-	-	-	-	DENMAN, CATTLIN																																																															
Officer's Rank and Signature TROOPER [Signature]		Badge/ID No. 5241		NCIC No. 13503		Predictor/Pet F2		Station/Beat 31		Reviewing Officer Oreilly, G R		Date/Time Reviewed 4/23/2005 20:56																																																														

PAGE 16/19 * RCVD AT 5/1/2007 10:47:08 AM [Central Daylight Time] * SVR:A0116-XFX0101-S/16 * DNIS:52063 * CSID:8454404700 * DURATION (mm:ss):06:18

Page 3 of 3 Pages

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
 MV-104A (3/04)

Local Codes
 SJS# 1021838
 SP2F39000025

☐ **ALL INFORMATION REPORT**

Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Month	Day	Year						Accident Reconstructed <input type="checkbox"/>		
4	15	2005	Friday	10:33	3	1	0			

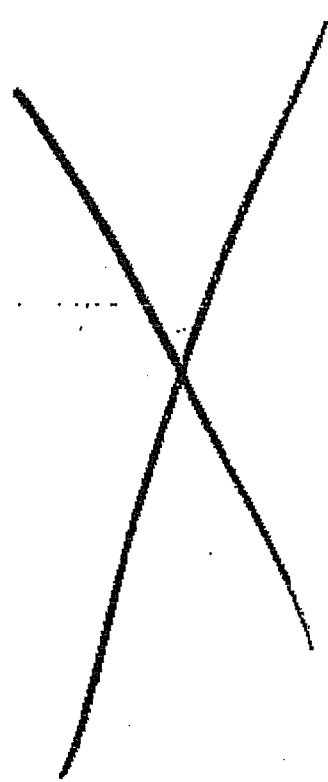
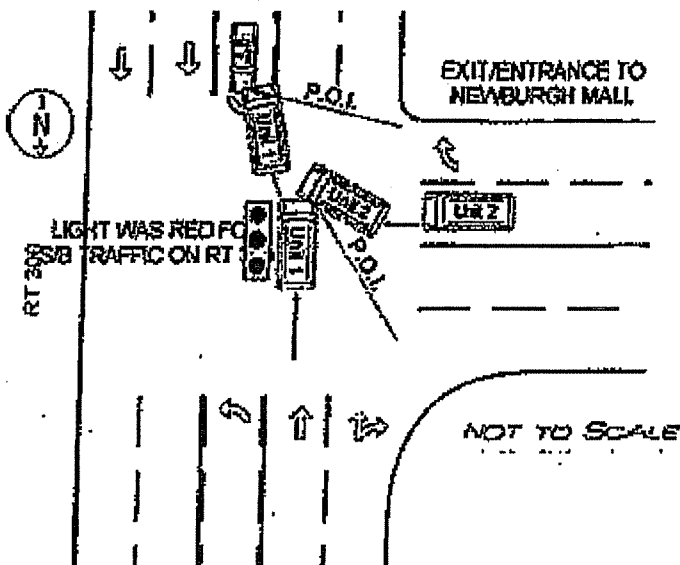


Exhibit “B”

LAW OFFICE OF JEAN DONOGHUE-SIMON
1433 HOOPER AVENUE, SUITE 212
P.O. BOX 4919
TOMS RIVER, NJ 08754-4919
732-286-6900

Attorneys for Plaintiffs, Rose Ann Novella and Rosario Novella

ROSE ANN NOVELLA and ROSARIO NOVELLA, her husband, Plaintiffs, v. CARL FERGUSON and ROSE FERGUSON, JOHN DOE 1-5 (fictitious names), ABC CORPORATION 1-5 (fictitious names), jointly, severally and in the alternative, Defendants.	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY Civil Action COMPLAINT, JURY DEMAND AND DESIGNATION OF TRIAL COUNSEL 07-CV-1712 (GEB)
---	--

Plaintiffs, Rose Ann Novella and Rosario Novella, residing at 224 Lantern Place in the Borough of Tuckerton, County of Ocean, and State of New Jersey, by way of Complaint against defendants, say:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. 1332.
2. Venue is proper in this District since there is diversity of all parties.

FIRST COUNT

1. On or about April 15, 2005, plaintiff, Rose Ann Novella, was the owner and operator of a motor vehicle, which was exiting the Newburgh Mall traveling in a southeasterly direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.

2. At the time and place aforesaid, defendant, Carl Ferguson, was the operator of a motor vehicle owned by Rose Ferguson, which was traveling in a southerly

direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.

3. At the time and place aforesaid, defendant, Rose Ferguson, owned, operated, maintained, and/or repaired the motor vehicle related to any allegations made in this Complaint.

4. At the time and place aforesaid, defendants Carl Ferguson and Rose Ferguson resided at 10 Estate Boulevard in the City of Newburgh, County of Orange, State of New York.

5. At the time and place aforesaid, defendants, John Doe 1-5 (fictitious names), were unknown persons or entities who owned, operated, maintained, and/or repaired motor vehicles related to any allegations made in this Complaint.

6. At the time and place aforesaid, defendants, ABC Corporation 1-5 (fictitious names), who owned, operated, maintained and/or repaired motor vehicles related to any allegations made in this Complaint.

7. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), owed plaintiff a duty to operate, maintain, and/or repair the motor vehicle in a reasonably prudent and safe manner so as not to cause harm to the plaintiff.

8. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), breached said duty and so negligently and carelessly operated, maintained and/or repaired their motor vehicle so as to cause the motor vehicle being operated by the defendant aforesaid to strike plaintiff, Rose Ann Novella.

9. As a direct and proximate result of the aforesaid carelessness, and negligence of defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly and/or severally, and in the alternative, plaintiff was caused to suffer severe, multiple and permanent bodily injuries, has suffered and continues to suffer great pain and anguish, has incurred and will continue to incur expenses for medical care and treatment, has been and will continue to be unable to engage in his usual duties and activities, and as otherwise sustained damages.

WHEREFORE, plaintiff, Rose Ann Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

SECOND COUNT

1. Plaintiff, Rosario Novella, repeats and realleges the allegations of the First Count of the Complaint as though set forth more fully herein at length.

2. Plaintiff, Rosario Novella, is the husband of plaintiff, Rose Ann Novella.

3. As the result of the injuries suffered by his wife as aforesaid, plaintiff, Rosario Novella, was deprived of the services, society and consortium of his wife from the time of the accident until the present, and will in the future continue to suffer said loss of services, society and consortium.

WHEREFORE, plaintiff, Rosario Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

JURY DEMAND

PLEASE TAKE NOTICE that the plaintiffs demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby designate Jean Donoghue-Simon, Esquire as trial counsel on the within cause pursuant to the R.4:24-4

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

Pursuant to R. 4:5-1, the matter in controversy is not the subject of any other action pending in any Court or in any pending arbitration proceeding, nor is any arbitration proceeding contemplated. Plaintiffs are not aware of any other parties, which should be joined in this action.

LAW OFFICE OF JEAN DONOGHUE-SIMON
Attorneys for Plaintiffs

By 
JEAN DONOGHUE-SIMON, ESQ.

DATED: April 10, 2007

MC DERMOTT & MC GEE, LLP

75 Main Street, Suite 305

P.O. Box 192

Millburn, NJ 07041

973-467-8080

Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA,
her husband,

-vs-

Defendants,

CARL FERGUSON, ROSE FERGUSON,
JOHN DOE 1-5 (fictitious names),
ABC CORPORATION 1-5
(fictitious names), jointly, severally and
in the alternative

ORDER TO CHANGE VENUE, PURSUANT TO *CIV. R. 12(b)(3)*

This matter having come before the Court on application of McDermott and McGee, LLP, attorneys for defendants, Carl Ferguson and Rose Ferguson, seeking an Order, pursuant to *Civ. R. 12(b)(3)*, changing the venue of the within litigation from the District of New Jersey to the Southern District of New York; and the Court having reviewed the matter; and good cause being shown;

It is on this _____ day of _____, 2007, O R D E R E D that the venue of

this matter be changed from the District Court of New Jersey to the Southern District of New York, pursuant to *Civ. R. 12(b)(3)*; and it is further;

O R D E R E D that a copy of this Order be served upon all counsel of record within ____ days from the date hereof.

U.S.D.J.

____ Unopposed

____ Opposed

MC DERMOTT & MC GEE, LLP

75 Main Street, Suite 305

P.O. Box 192

Millburn, NJ 07041

973-467-8080

Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA,
her husband,

-vs-

Defendants,

CARL FERGUSON, ROSE FERGUSON,
JOHN DOE 1-5 (fictitious names),
ABC CORPORATION 1-5
(fictitious names), jointly, severally and
in the alternative

CERTIFICATION OF SERVICE

CATHERINE A. STAMATO, being of full age, certifies as follows:

1. I am employed as a legal secretary for the Law Firm of McDermott and McGee, LLP, counsel for defendants, Carl Ferguson and Rose Ferguson, in the within matter.
2. On this date, I have filed, via electronic mail, the within Notice of Motion, supporting Certification and proposed form of Order with the Clerk's Office of the United States District Court, District of New Jersey, in Trenton, New Jersey. I understand that simultaneously, our adversary, Jean Donoghue-Simon, will also be receiving a copy of our Notice of Motion, supporting Certification and

proposed form of Order.

I hereby certify that the foregoing statements made by me are true. I am aware that if any are willfully false, I am subject to punishment.



Catherine A. Stamato

Dated: May 7, 2007

MC DERMOTT & MC GEE, LLP

75 Main Street, Suite 305

P.O. Box 192

Millburn, NJ 07041

973-467-8080

Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA,
her husband,

-vs-

Defendants,

CARL FERGUSON, ROSE FERGUSON,
JOHN DOE 1-5 (fictitious names),
ABC CORPORATION 1-5
(fictitious names), jointly, severally and
in the alternative

**BRIEF IN SUPPORT OF
NOTICE OF MOTION FOR AN ORDER TO
CHANGE VENUE, PURSUANT TO
*Civ.R. 12(b)(3)***

John L. McDermott, Jr., Esq. (2779)
On the Brief

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<i>Potluri v. Yalamanchili</i> , Slip Copy, 2007 WL708908(D.N.J.)	1
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<i>White v. Smithkline Beecham Corp.</i> , Slip Copy, 2007 WL1237952 (E.D.Pa.) .	1

STATEMENT OF MATERIAL FACTS

1. This law suit arises out of a motor vehicle accident which occurred on April 15, 2005 on Route 300 at the intersection with the entrance/exit to the Newburgh Mall in Newburgh, New York. (See copy of police report annexed hereto as Exhibit "A".)
2. Plaintiffs Rose Ann Novella and Rosario Novella have filed suit in the United States District Court for the District of New Jersey, citing, as the basis for their suit, diversity of citizenship and amount in controversy in excess of sum or value of \$75,000.00 pursuant to 28 U.S.C. 1332. Plaintiffs also allege that the venue is proper in the District of New Jersey as there is diversity of all parties. (See copy of plaintiffs' Complaint annexed hereto as Exhibit "B".)
3. Defendants, Carl Ferguson and Rose Ferguson, the only defendants, are both residents of Newburgh, New York. The incident, which gives rise to this litigation, occurred in Newburgh, New York. Additionally, the driver and occupant of the third vehicle involved in the accident, who are potential witnesses, live in Cornwall, New York. Also, the investigating police officer, Trooper J.P. Santopietro, of the New York State Police, works in the Newburgh, New York area. (See Exhibit "A".)

STATEMENT OF LAW

**THE VENUE OF THIS MATTER SHOULD BE CHANGED
TO THE SOUTHERN DISTRICT OF NEW YORK AS THAT
FORUM WILL BE MORE CONVENIENT FOR THE PARTIES
AND WITNESSES.**

28 U.S.C. §1391(a) states: (a) civil action wherein jurisdiction is founded only on diversity of citizenship may, except as other-wise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim, occurred . . . , or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.” A defendant seeking transfer of venue has the burden to demonstrate that the case could have been brought initially in the proposed transferee forum, that the proposed transfer will be more convenient for the parties and witnesses, and that an interest of justice will be served by transferring the matter. 28 U.S.C. §1404(a); *Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 879 (3d Cir. 1995); *Shutte v. Arm Co. Steel Corp.*, 431 F.2d 22, 25 (3d Cir. 1970); *White v. Smithkline Beecham Corp.*, Slip Copy, 2007 WL1237952 (E.D.Pa.); *Potluri v. Yalamanchili*, Slip Copy, 2007 WL708908(D.N.J.)

Here, the suit is based upon diversity of citizenship. Both defendants reside in Newburgh, New York which is situated within the Southern District of New York. The accident giving rise to this litigation occurred in Newburgh, New York. The investigating trooper and driver and passenger in the third vehicle involved in the incident, who are not named as parties, but may be potential witnesses, work and reside in New York. Therefore, transferring this matter from the District of New Jersey to the Southern District of New York will be more convenient for the parties and for the witnesses. The change of venue to the Southern District of New York will be in the interest of justice as, this accident

occurred in New York and, therefore, New York law would apply. Finally, there was nothing preventing plaintiffs from initially filing their Complaint in the Southern District of New York. In light of this, pursuant to *Civ. R. 12(b)(3)*, venue in this matter should be changed to the Southern District of New York.

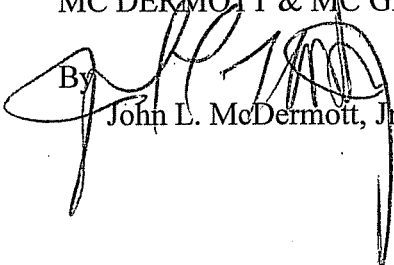
CONCLUSION

For the reasons set forth herein, it is respectfully requested that an Order be entered changing venue from the District of New Jersey to the Southern District of New York.

Respectfully submitted,

MC DERMOTT & MC GEE, LLP

By

 John L. McDermott, Jr. (2779)

Dated: May 15, 2007

Exhibit “A”

Page 1 of 3 Pages

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (3/04)

Local Codes
SJS# 102183B
BP2F39000025

☐ AMENDED REPORT

1		Accident Date Month 4 Day 15 Year 2005		Day of Week Friday	Time 10:33	No. of Vehicles 3	No. Injured 1	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Phone <input type="checkbox"/> Yes <input type="checkbox"/> No	20			
2		VEHICLE 1 Vehicle ID Number 601902981 Driver Name - exactly as printed on license FERGUSON, CARL Address (include Number and Street) 10 ESTATE BLVD City or Town NEWBURGH State NY Zip Code 12550				VEHICLE 2 Vehicle ID Number M6851 6717259402 Driver Name - exactly as printed on license ROSEANN, NOVELLA P Address (include Number and Street) 224 LANTRINN PLACE City or Town TUCKERTON State NJ Zip Code 08087				VEHICLE 3 Vehicle ID Number 2F39007SSP Driver Name - exactly as printed on license DENMAN, SUMETTA Address (include Number and Street) 10 ESTATE BLVD City or Town NEWBURGH State NY Zip Code 12550		VEHICLE 4 Vehicle ID Number 2F39007SSP Driver Name - exactly as printed on license DENMAN, CAITLIN Address (include Number and Street) 10 ESTATE BLVD City or Town NEWBURGH State NY Zip Code 12550		21	
3		Date of Birth Month 2 Day 25 Year 1967 Sex M Unlicensed <input type="checkbox"/> No. of Occupants 01 Public Property Damaged <input type="checkbox"/>				Date of Birth Month 9 Day 7 Year 1940 Sex F Unlicensed <input type="checkbox"/> No. of Occupants 01 Public Property Damaged <input type="checkbox"/>				Date of Birth Month 9 Day 7 Year 1940 Sex F Unlicensed <input type="checkbox"/> No. of Occupants 01 Public Property Damaged <input type="checkbox"/>		22			
4		Name - exactly as printed on registration FERGUSON, ROSE Sex F Date of Birth Month 2 Day 25 Year 1967				Name - exactly as printed on registration ROSEANN, NOVELLA P Sex F Date of Birth Month 9 Day 7 Year 1940				Name - exactly as printed on registration DENMAN, SUMETTA Sex F Date of Birth Month 9 Day 7 Year 1940		23			
5		Plate Number F356VU State of Reg. NY Vehicle Year & Make 1998 PLYM Vehicle Type SUBN Ins. Code 011				Plate Number RNE71K State of Reg. NJ Vehicle Year & Make 2004 HOND Vehicle Type SUBN Ins. Code				Plate Number 2F39007SSP State of Reg. NY Vehicle Year & Make 1998 PLYM Vehicle Type SUBN Ins. Code 011		24			
6		Violation Section(s) 4011A 1111D1				Violation Section(s)				Violation Section(s)		25			
7		Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.				Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.				Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.				26	
8		VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact 3 Box 2 - Most Damage 2 Enter up to three more damage codes 4 5				VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact 12 Box 2 - Most Damage 12 Enter up to three more damage codes 1 2 4				VEHICLE 3 DAMAGE CODES Box 1 - Point of Impact 12 Box 2 - Most Damage 12 Enter up to three more damage codes 1 2 4				27	
9		Vehicle Dr. QUALITY TOW Towed To QUALITY TOW				Vehicle Dr. AER Towed To AER				Vehicle Dr. AER Towed To AER				28	
10		VEHICLE DAMAGE CODING: 1-13 SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER				VEHICLE DAMAGE CODING: 1-13 SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER				VEHICLE DAMAGE CODING: 1-13 SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER				29	
11		Reference Marker 3 0 0 -				Coordinates (if available) Latitude/Northing: 577620 Longitude/Easting: 4596845				Place Where Accident Occurred: County ORANGE City Village Town of NEWBURGH Road on which accident occurred ST-300 at 1) intersecting street NEWBURGH MALL ENTRANCE or 2) mile DE GW of DISCOUNT PLAZA INTERSECTION (Route Number or Street Name)				30	
12		Accident Description/Officer's notes: PATROLLED TO MAIN ENTRANCE OF NEWBURGH MALL ON RT 300 AT LIGHT. DRIVER OF V-1 WAS HEADING SOUTHBOUND ON RT 300 APPROACHING THE INTERSECTION OF RT300 AND NEWBURGH MALL EXIT/ ENTRANCE. DRIVER OF V-1 FAILED TO NOTICE RED LIGHT IN FRONT OF HIM AS THE TRAFFIC CONTROL DEVICE FOR HIS LANE. V-1 DROVE THROUGH RED LIGHT STRIKING V-2 IN THE LEFT FRONT QUARTER PANEL. V-1 THEN CONTINUED ON STRIKING V-3 HEAD ON. OPERATOR AND REGISTERED OWNER INSURANCE INFORMATION FOR OUT OF STATE PLATES RNE71K, INS. CODE 415 POLICY # 257A415356.												31	
13		ALL INVOLVED												32	
14		OFFICER'S RANK AND SIGNATURE TROOPER J P Santopietra												33	
15		BADGE/D NO. 5241 NCIC NO. 13503 PRECINCT/POST TROOP/ZONE F2												34	
16		STATION/BEAT 31 REVIEWING OFFICER O'Reilly, G R												35	
17		DATE/TIME REVIEWED 4/21/2005 20:56												36	

42

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
MV-104A (3/04)

Local Codes
SJS# 1021838
SP2F39000025

☐ ALL INVOLVED VEHICLES

Accident Date			Day of Week	Approx. Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input type="checkbox"/> No
Month	Day	Year						Accident Reconstructed <input type="checkbox"/>		
4	15	2005	Friday	10:33	3	1	0			

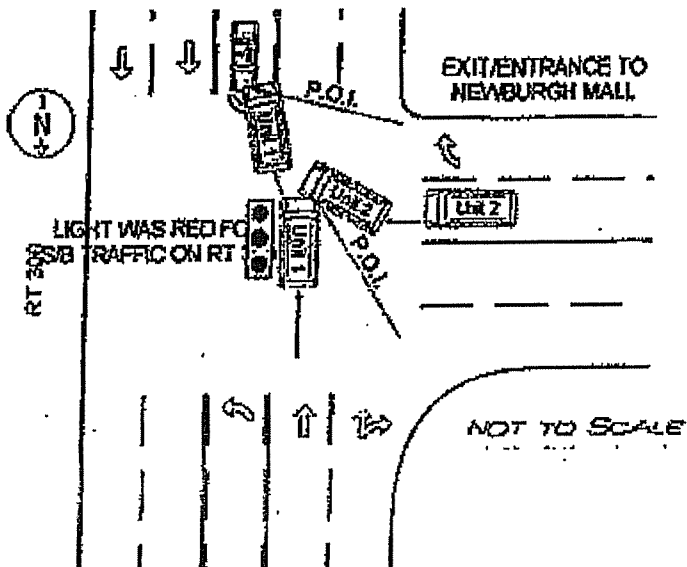


Exhibit “B”

direction on Route 300, in the Township of Newburgh, County of Orange and State of New York.

3. At the time and place aforesaid, defendant, Rose Ferguson, owned, operated, maintained, and/or repaired the motor vehicle related to any allegations made in this Complaint.

4. At the time and place aforesaid, defendants Carl Ferguson and Rose Ferguson resided at 10 Estate Boulevard in the City of Newburgh, County of Orange, State of New York.

5. At the time and place aforesaid, defendants, John Doe 1-5 (fictitious names), were unknown persons or entities who owned, operated, maintained, and/or repaired motor vehicles related to any allegations made in this Complaint.

6. At the time and place aforesaid, defendants, ABC Corporation 1-5 (fictitious names), who owned, operated, maintained and/or repaired motor vehicles related to any allegations made in this Complaint.

7. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), owed plaintiff a duty to operate, maintain, and/or repair the motor vehicle in a reasonably prudent and safe manner so as not to cause harm to the plaintiff.

8. At the time and place aforesaid, defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), breached said duty and so negligently and carelessly operated, maintained and/or repaired their motor vehicle so as to cause the motor vehicle being operated by the defendant aforesaid to strike plaintiff, Rose Ann Novella.

9. As a direct and proximate result of the aforesaid carelessness, and negligence of defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly and/or severally, and in the alternative, plaintiff was caused to suffer severe, multiple and permanent bodily injuries, has suffered and continues to suffer great pain and anguish, has incurred and will continue to incur expenses for medical care and treatment, has been and will continue to be unable to engage in his usual duties and activities, and as otherwise sustained damages.

WHEREFORE, plaintiff, Rose Ann Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

SECOND COUNT

1. Plaintiff, Rosario Novella, repeats and realleges the allegations of the First Count of the Complaint as though set forth more fully herein at length.

2. Plaintiff, Rosario Novella, is the husband of plaintiff, Rose Ann Novella.

3. As the result of the injuries suffered by his wife as aforesaid, plaintiff, Rosario Novella, was deprived of the services, society and consortium of his wife from the time of the accident until the present, and will in the future continue to suffer said loss of services, society and consortium.

WHEREFORE, plaintiff, Rosario Novella, demands judgment against defendants, Carl Ferguson, Rose Ferguson, John Doe 1-5 (fictitious names); and ABC Corporation 1-5, (fictitious names), jointly, severally and in the alternative, for damages, interest, costs of suit, and such other relief as the Court deems equitable and just.

JURY DEMAND

PLEASE TAKE NOTICE that the plaintiffs demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Plaintiffs hereby designate Jean Donoghue-Simon, Esquire as trial counsel on the within cause pursuant to the R.4:24-4

CERTIFICATION PURSUANT TO RULE 4:5-1(b)(2)

Pursuant to R. 4:5-1, the matter in controversy is not the subject of any other action pending in any Court or in any pending arbitration proceeding, nor is any arbitration proceeding contemplated. Plaintiffs are not aware of any other parties, which should be joined in this action.

LAW OFFICE OF JEAN DONOGHUE-SIMON
Attorneys for Plaintiffs

By: 

JEAN DONOGHUE-SIMON, ESQ.

DATED: April 10, 2007

MC DERMOTT & MC GEE, LLP
75 Main Street, Suite 305
P.O. Box 192
Millburn, NJ 07041
973-467-8080
Attorneys for Defendants: Carl Ferguson and Rose Ferguson

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No: 07-CV-1712 (GEB)

Plaintiff(s),

ROSE ANN NOVELLA and ROSARIO NOVELLA,
her husband,

-vs-

Defendants,

CARL FERGUSON, ROSE FERGUSON,
JOHN DOE 1-5 (fictitious names),
ABC CORPORATION 1-5
(fictitious names), jointly, severally and
in the alternative

CERTIFICATION OF SERVICE

CATHERINE A. STAMATO, being of full age, certifies as follows:

1. I am employed as a legal secretary for the Law Firm of McDermott and McGee, LLP, counsel for defendants, Carl Ferguson and Rose Ferguson, in the within matter.

2. On this date, I have filed, via electronic mail, the within Brief in support of our Notice of Motion to Change Venue with the Clerk's Office of the United States District Court, District of New Jersey, in Trenton, New Jersey. I further certify that on this date, I have sent a copy to our adversary, Jean Donoghue-Simon, Esq., counsel for plaintiffs, at 1433 Hooper Avenue, Suite

212, P.O. Box 4919, Toms River, NJ, 08754-4919, by First Class Mail.

I hereby certify that the foregoing statements made by me are true. I am aware that if any are willfully false, I am subject to punishment.

C. A. Stamato

Catherine A. Stamato

Dated: May 15, 2007

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RECEIVED

MAY 25 2007

AT 8:30
WILLIAM T. WALSH
CLERK

NOVELLA, et al.,

Plaintiffs,
v.

FERGUSON, et al.,

Defendants.

Civ. No. 07-1712 (GEB)

ORDER

BROWN, Chief Judge

This matter having come before the Court upon the Motion for an Order to Change Venue of Carl Ferguson, Rose Ferguson, John Doe 1-5, ABC Corporation 1-5 (collectively "Defendants"); and Plaintiffs Rose Ann Novella and Rosario Novella (collectively, "Plaintiffs") having consented to the change of venue; and the Court having fully reviewed all documents filed and submitted;

IT IS THIS 24th day of MAY, 2007

ORDERED that Defendants' Motion for Change of Venue is GRANTED; and

ORDERED that this case be transferred to the Southern District of New York.


GARRETT E. BROWN, JR., U.S.D.J.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
OFFICE OF THE CLERK

402 E. State Street
TRENTON, NEW JERSEY 08608

NEWARK OFFICE
50 WALNUT STREET
NEWARK, NJ 07101

TRENTON OFFICE
402 EAST STATE STREET
ROOM 2020
TRENTON, NJ 08608

REPLY TO: TRENTON

WILLIAM T. WALSH
Clerk

January 4, 2008

United States District Court
Southern District of New York
U.S. Courthouse
40 Foley Square
New York City, NY 10007-1581

Re: ROSE ANN NOVELLA, et als. vs. CARL FERGUSON, et als.
Civil Action No. 07-1712 (GEB)

Dear Clerk:

The above-captioned case has been transferred to your court pursuant to the enclosed Certified copy of the Order dated October 4, 2006. You can obtain the original record by accessing CM/ECF. Kindly acknowledge receipt on the duplicate of this letter, which is provided for your convenience.

Very truly yours,

WILLIAM T. WALSH, Clerk



By: Sharon D. Syphrett
Deputy Clerk

The above captioned record was received this _____ day of _____, 2004.

Signature and Title of Receiver _____

Instructions for Retrieving Electronic Case Files